



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-D-1309]

Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a draft guidance for industry entitled "Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act." To qualify for exemptions under section 503A of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), a drug product must be compounded by a licensed pharmacist or physician who does not compound regularly or in inordinate amounts any drug products that are essentially copies of a commercially available drug product. This guidance sets forth FDA policies regarding this provision of section 503A, including the terms "commercially available," "essentially a copy of a commercially available drug," and "regularly or in inordinate amounts."

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work to finalize the guidance, submit either electronic or written comments on this draft guidance by

[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2016-D-1309 for "Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions--To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of

Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at:

<http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the SUPPLEMENTARY INFORMATION section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sara Rothman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5197, Silver Spring, MD, 301-796-3110.

SUPPLEMENTARY INFORMATION:

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Compounded Drug Products That Are Essentially Copies of a Commercially Available Drug Product Under Section 503A of the Federal Food, Drug, and Cosmetic Act." Section 503A (21 U.S.C. 353a), added to the FD&C Act by the Food and Drug Administration Modernization Act in 1997, describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist in a State-licensed pharmacy or Federal facility, or by a licensed physician, to be exempt from the following three sections of the FD&C Act:

- Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice requirements);
- section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and
- section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

One of the conditions that must be met for a compounded drug product to qualify for the exemptions under section 503A of the FD&C Act is that it must be compounded by a licensed pharmacist or a licensed physician that does not compound regularly or in inordinate amounts (as defined by the Secretary) any drug products that are essentially copies of a commercially available drug product (see section 503A(b)(1)(D)).

The statute further states that the term "essentially a copy of a commercially available drug product" does not include a drug product in which there is a change, made for an identified individual patient, which produces for that patient a significant difference, as determined by the

prescribing practitioner, between the compounded drug and the comparable commercially available drug (see section 503A(b)(2)).

This draft guidance sets forth the FDA's proposed policies regarding this provision of section 503A, including the terms "commercially available," "essentially a copy of a commercially available drug," and "regularly or in inordinate amounts."

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the compounded drug products that are essentially copies of a commercially available drug product under section 503A of the FD&C Act. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this document, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Under the draft guidance, pursuant to section 503A(b)(2) of the FD&C Act, a compounded drug product is not essentially a copy of a commercially available drug product if a change is made for an identified individual patient, and the prescribing practitioner has determined that the change will produce a significant difference for that patient. If a compounder intends to rely on such a determination to establish that a compounded drug is not essentially a copy of a commercially available drug product, the compounder should ensure that the determination is documented on a prescription.

If a prescription does not make clear that the prescriber made the determination required by section 503A(b)(2), or a compounded drug is substituted for the commercially available product at the pharmacy, the compounder may contact the prescriber and if the prescriber confirms it, make a notation on the prescription that the compounded product contains a change that makes a significant difference for the patient. The notations should be as specific as those described in this document, and the date of the conversation with the prescriber should be included on the prescription.

We estimate that annually a total of approximately 3,444 compounders ("number of respondents" in table 1, line 1) will consult a prescriber to determine whether he or she has made a determination that the compounded drug has a change that produces a significant difference for a patient as compared to the comparable commercially available drug, and that the compounders will document this determination on approximately 172,200 prescription orders for compounded drugs ("total annual disclosures" in table 1, line 1). We estimate that the consultation between the compounder and the prescriber and adding a notation to each prescription that does not already document this determination will take approximately 3 minutes per prescription order.

In addition, if the drug was compounded because the approved product was not commercially available because it was on the FDA drug shortage list, the prescription or a notation on the prescription should note that it was on the drug shortage list and the date the list was checked. We estimate that a total of approximately 6,888 compounders ("number of respondents" in table 1, line 2) will document this information on approximately 344,400 prescription orders for compounded drugs ("total annual disclosures" in table 1, line 2). We estimate that checking FDA's drug shortage list and documenting this information will take approximately 2 minutes per prescription order.

Compounders under section 503A should maintain records of the frequency in which they have compounded drug products that are essentially copies of commercially available drug products and the number of prescriptions that they have filled for compounded drug products that are essentially copies of commercially available drug products to document that such compounding has not been done "regularly" or in "inordinate amounts." We estimate that a total of approximately 3,444 compounders ("number of recordkeepers" in table 1) will keep



approximately 165,312 records ("total annual records"). We estimate that maintaining the records will take approximately 2 minutes per record.

A licensed pharmacist or physician seeking to compound a drug product under section 503A should also maintain records of prescriptions for identified individual patients including notations that a prescriber has determined that the compounded drug has a change that produces a significant difference for the identified patient. Because the time, effort, and financial resources necessary to comply with this collection of information would be incurred by licensed pharmacists and licensed physicians in the normal course of their activities, it is excluded from the definition of "burden" under 5 CFR 1320.3(b)(2). FDA understands that maintaining records of prescriptions for compounded drug products is part of the usual course of the practice of compounding and selling drugs and is required by States' pharmacy laws and other state laws governing recordkeeping by health care professionals and health care facilities.

FDA estimates the burden of this collection of information as follows:

Table 1.--Estimated Annual Third-Party Disclosure Burden<sup>1</sup>

Type of Reporting	No. of Respondents	No. of Disclosures per Respondent	Total Annual Disclosures	Average Burden per Disclosure	Total Hours
Consultation between the compounder and prescriber and the notation on the prescription documenting the prescriber's determination of significant difference.	6,888	50	344,400	3 minutes	17,220
Checking FDA's drug shortage list and documenting on the prescription that the drug is in shortage.	6,888	50	344,400	2 minutes	11,480

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 2.--Estimated Annual Recordkeeping Burden<sup>1</sup>

Type of Recordkeeping	No. of Recordkeepers	No. of Records per Recordkeeper	Total Annual Records	Average Burden per Recordkeeping	Total Hours
Records of frequency and number of prescriptions filled for compounded drugs that are essentially a copy.	3,444	48	165,312	2 minutes	5,510

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

### III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either

<http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>

or <http://www.regulations.gov>.

Dated: July 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

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